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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.75 OF 2007
IN
COMPANY PETITION NO.412 OF 1985

Midland Bank Plc. Petitioner

versus

The Official Liquidator
and others Respondents

and

ICICI Bank Limited Applicants

Simil Purohit i/by Little & Co. for Applicants.

Deputy Official Liquidator Mr.S.Ramakant present for Respondent no.1.

R.J.Mane, AGP for Respondent no.2.

Anilkumar Patil for respondent no.3.

CORAM : A.M.KHANWILKAR, J.

DATE : 30th November 2007.

PC :

1. Heard counsel for the parties. The subject application has been taken out by an Auction Purchaser M/s.Sangli Bank Limited (predecessor of the Applicant herein) for the following reliefs:-

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"a) The Respondent No.1 be directed to pay the arrears of land revenue and the taxes to the Respondent Nos.2 and 3 from the sale proceeds of the properties without any interest in respect of the properties purchased by the Applicants for the period prior to the confirmation of sale in favour of the Applicant;

b) that the Applicant be permitted to pay the revenue tax and the local tax to the Respondent Nos.2 and 3 for the period commencing from the date of confirmation of the sale of the properties, without any penalty in respect of the properties purchased by the Applicants;

c) that the Respondent Nos.2 and 3 be directed to enter the name of the Applicant in the revenue and other record maintained by them in respect of the properties purchased by the Applicant;

d) that the time to execute Deed of Conveyance be extended from 26th January, 2007 for a further period of 6 months;

e) Cost of the Application be provided for;

f) Such other and further reliefs as the nature and circumstances of the case may require."

2. Briefly stated, Company Petition No.412 of 1985 was filed in this Court praying for winding up of Madhavnagar Cotton Mills Limited. This Court by order dated 16th January 1997 directed winding up of the said company. Pursuant to the order of the Company Judge, the Official

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Liquidator, High Court, Bombay came to be appointed, who in turn, took over the possession of all the assets, and submitted report on 19th February 2002 for sale of some of the assets of the company. It appears that the Company Judge accepted the recommendation of the Official Liquidator and permitted sale of the said assets. The sale process was completed by the Official Liquidator and placed before the Company Judge for confirmation of sale, which was done on 22nd August 2003. However, that order was questioned in an appeal by the Auction Purchaser M/s.Sangli Bank Limited before the Division Bench of this Court being Appeal No.386 of 2004. In the said appeal, the sale process confirmed by the Company Judge, came to be set aside on 22nd March 2004. Instead, the Division Bench directed resale of the self-same assets on certain conditions. As per the said direction, a public notice for sale of the stated properties was issued specifying the terms and conditions of sale and notifying the place of auction at Sangli on 5th June 2004. Besides the Auction Purchaser M/s.Sangli Bank Limited, there were other participants. In the present application, we are concerned with the auction sale only of following assets of the company in liquidation namely :-

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(I) Lot No.III :- Manager's Bungalow situated at Gurwarpeth, Madhavnagar, Sangli;

(ii) Lot No.IV : Immovable Property :

Sub Lot No.3 :- Survey No.203(4), Sangli-Tasgaon Road, Madhavnagar, Sangli;

Sub Lot No.5 :- Land bearing S.No.197, 198, 199(1-4), 201(1-5), 202(1) and 203(1), Madhavnagar-Tasgaon Road, Madhavnagar, Sangli.

3. The Auction Purchaser M/s.Sangli Bank Limited turned out to be the highest bidder in the said auction conducted by the Official Liquidator on 5th June 2004. Accordingly, a report was placed before the Company Judge by the Official Liquidator for confirmation of the said sale, which recommendation was accepted by the Company Judge on 30th July 2004 on usual conditions referred to in the said order. Consequent thereto, the Official Liquidator handed over possession of the above said immovable properties to M/s.Sangli Bank Limited on 6th September 2004 after receiving the entire consideration.

4. The issue raised in the present application, according to the applicant, is whether the order passed by the Tahsildar, Miraj dated 18th March

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2005 directing taking over possession of the above said properties, which have been purchased by M/s.Sangli Bank Ltd. in an auction conducted by the Official Liquidator and confirmed by this Court, was legal and valid? According to the applicant, the Revenue Officer, without giving notice to them (M/s.Sangli Bank Ltd) proceeded to take possession of the immovable properties and entered the name of the Government of Maharashtra in 7/12 extract. The applicant asserts that on account of this development, the applicant was unable to lodge the Deed of Conveyance for registration. The applicant asserts that the aforesaid development came to the knowledge of the applicant only on 18th October 2006, on noticing the Mutation Entry in relation to the above said properties. As a result, the Auction Purchaser M/s.Sangli Bank Ltd. rushed to this Court on 23rd January 2007 by way of present application for the reliefs which are already reproduced in entirety in the earlier part of this order.

5. The application was moved before the Company Judge on 15th February 2007 when the application was made absolute in terms of prayer clause (d) only, by consent of the Official Liquidator.

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Insofar as other prayer clauses, the same were to be considered later. It appears that during pendency of this application, the Auction Purchaser-M/s.Sangli Bank Limited was taken over by M/s.ICICI Bank Limited. As a result of that development, an amendment to the present application was necessitated. The same was granted by my predecessor on 16th June 2007. Consequent thereto, the amendment has been carried out, and the present proceedings are now pursued by M/s.ICICI Bank Limited as an applicant, who have stepped into the shoes of the original Auction Purchaser M/s.Sangli Bank Limited.

6. As mentioned earlier, on 15th February 2007, my predecessor was pleased to make the application absolute in terms of prayer clause (d). On account of that order, the applicant was expected to lodge the Deed of Conveyance for registration within six months therefrom. However, that formality was not complied. Instead, the applicant moved the application on 19th July 2007 praying for further time to execute the Sale Deed. Even that request has been accepted by my predecessor under order dated 19th July 2007, permitting the applicant to

execute the Deed of Conveyance on or before 31st December 2007. During the course of hearing of this application, the counsel for the applicant candidly accepted that even now the Deed of Conveyance has not been executed or for that matter lodged for registration. It was submitted on behalf of the applicant that even if this Court were to reject other reliefs of the applicant, the Court may consider granting further time to the applicant for execution and registration of the Deed of Conveyance in relation to the above said properties.

7. Before I proceed to deal with the submissions made on behalf of both the sides, I think it apposite to advert to the averments made in the affidavit in support of the application. For considering the points in issue in this application, it will be apposite to refer to paragraphs 4 to 9 of the affidavit in support of the motion, which spells out the basis on which the applicant seeks reliefs claimed in this application. The same reads thus:-

> "4. I say that after receiving possession the Applicant started levelling of the land. During the process of the work, the Grampanchayat, Madhavnagar obstructed the land levelling and took objection on the

ground that the Madhavnagar Cotton Mills Ltd. (Liquidation) has not paid the taxes from 1994 onwards. The Applicant thereafter stopped the work. I say that the winding up proceedings of the Company commenced pursuant to an order dated 16th January, 1997 and is not yet completed. Sections 529(a) and 530 of the Companies Act, 1956 provide for the distribution and priorities of claims. I say that taxes which have become due and payable during the winding up will be payable out of the sake proceeds in priority to other claims. The Respondent Nos.2 and 3 have already lodged their claims with the Official Liquidator. I say that the liability of the Company in liquidation should not be passed on to the purchaser of the assets of the company and the purchaser will be liable for the payment of taxes for the period commencing from the date of the confirmation of sale of the properties.

5. I say that though the Respondent Nos.2 and 3 have lodged their claim with the Official Liquidator, High Court, Bombay and the Official Liquidator by their letter dated 23rd March, 2005 have issued a notice under Rule 159 of the Companies (Court) 1959, it appears that no details have been provided by the Respondent no.2.

6. I say that Tahsildar Miraj with the knowledge of Respondent No.1 has passed an order on 18th March, 2005 and directed their office to take possession of the land and enter the name in the 7/12 extract of the Government of Maharashtra. Accordingly, when the Applicant obtained 7/12 extract on 18th October, 2006 they learned about the change of the name that in place of Madhavnagar Cotton Mills Ltd. (Liquidation) the name of Government of Maharashtra has been entered.

7. I say that the Applicant is ready and willing to pay the land revenue as well as local tax from the date of the purchase i.e. date of the order dated 30th July, 2004 confirming the sale.

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> 8. I say that time to execute Deed of Conveyance be extended further from 26th January, 2007 due to the changed circumstances. I say that further time of about 6 months will be required since the name of Government of Maharashtra has been entered on records of rights and for determining and payment of the taxes by the Applicant from the date of purchase of the property, completing registration of conveyance deed etc.
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> 9. I therefore submit that the Respondent No.1 be directed to pay the arrears of land revenue to the Respondent Nos.2 and 3 from the sale proceeds of the properties without any interest and the Respondent Nos.2 and 3 be directed to enter the name of the Applicant in the revenue and other records maintained by them."

8. The Official Liquidator has filed an affidavit dated 14th March 2007 placing on record as to how the auction of the properties in question was progressed and came to be confirmed by the Company Judge. In paragraph 16 of the reply affidavit it is stated that the claim of the applicant that it is not liable to pay all the taxes and dues in respect of the properties purchased by it in the auction sale conducted by the Official Liquidator through this Court, is ill-advised. For, it is not open to the applicant to raise such plea which is against the terms and conditions of sale duly notified by the Official Liquidator and the applicant along with

other participants offered its bid on those terms and conditions. Besides, it is stated that at no point of time the applicant raised any objection of this nature at the time of auction or at the time of confirmation of sale by this Court. The Official Liquidator has also placed on record that after the sale consideration became available, he has already declared the dividend to the workers and secured creditors as per their entitlement out of the sale proceeds of the assets of the company. The Official Liquidator has also acknowledged the fact that the Tahsildar and Sarpanch, namely, respondent no.2 and 3 have lodged their claims with the Official Liquidator for an amount of Rs.41,840/- and Rs.19,40,673=70 Ps. respectively, but have not provided the break-up of the dues upto the date of confirmation of sale and thereafter.

9. Besides the Official Liquidator, the Tahsildar, Miraj has also filed reply affidavit sworn on 21st June 2007 asserting that the respondent nos.2 and 3 were entitled to recover the outstanding dues in relation to the above said properties as arrears of land revenue. It is stated that the claim in that behalf is now in the sum of Rs.19,93,175/- (including interest) as

arrears of rent (N.A.Tax) and land revenue in relation to the said properties of the company in liquidation. It is the case of respondents 2 and 3 that since 1994-95, their offices had been continuously sending notices for arrears of N.A.Tax and land revenue to the Manager of the company in liquidation as well as later on to the Official Liquidator from 2002 but the dues are still unpaid.

10. The counsel appearing for the applicant has mainly argued that the reliance placed by the Official Liquidator on Clause-14 of the terms and conditions of the sale is misplaced. According to the applicant, Clause-14 pertains to sale of movable properties and cannot have any application to the present case which relate to sale of some of the immovable properties. According to the applicant, in the present case, Clause-21 of the conditions will have application. On plain reading of Clause-21, however, it is seen that no liability is fastened upon the auction purchaser in relation to the outstanding dues pertaining to the immovable properties prior to the date of auction. It was argued that the expression "all other charges" occurring in Clause-21 will have to be read

ejusdem generis along with the requirement to pay stamp duty, registration charges and cannot be construed as covering arrears, taxes or dues.

11. It is next contended that even if Clause-14 was to be attracted, which creates liability on the auction purchaser to discharge the dues in respect of the immovable property purchased in the auction, that liability, however, would commence only from the date of auction and/or confirmation of sale and not in respect of the liability with regard to the said properties which is in anterior point of time. In other words, no dues relating to retrospective period can be recovered from the auction purchaser. It is then contended that the Official Liquidator having taken possession of the above said properties in March 1997 coupled with the fact that the respondent nos.2 and 3 had lodged their claim regarding outstanding dues as early as in May 2002, the Official Liquidator was under obligation to discharge that liability, as at the relevant point of time, the Official Liquidator had sufficient funds to pay the outstanding dues. Even in equity, therefore, the auction purchaser-applicant should not be fastened with the liability to pay the outstanding dues in

relation to the said immovable properties for the period prior to the date of auction or confirmation of sale in its favour.

12. It was next contended that the dues in respect of the said immovable properties constitute charge on the property. The auction purchaser had no knowledge about the said charge and was a bona fide purchaser without notice. In that case, the charge in respect of the immovable properties which have now been purchased by the auction purchaser, cannot be enforced against them. It is then contended that as per the Municipal Law, the primary liability of paying taxes or charges in relation to the immovable properties, was that of the original owner, namely, the company in liquidation. For that reason, the Official Liquidator is responsible to discharge the said liability and it cannot be fastened upon the auction purchaser-applicant herein. It is then contended that at any rate, the question of paying any interest and penalty on the outstanding dues after winding up order was passed on 16th January 1997 by the Company Judge, does not arise. Whereas, the respondents 2 and 3 have included such claim which is being enforced in relation to the immovable property.

It is submitted that atleast to the extent of such amount representing interest and penalty charges after the claim for the period after the order of winding up dated 16th January 1997, the respondents 2 and 3 will have to forebear and are disentitled from demanding such amounts. At the end, it is submitted that inspite of time having been extended by this Court for execution of the Conveyance Deed, the same has not been possible. In the interest of justice, therefore, this Court may consider of granting further time to the applicant for completion of the formalities in respect of execution and registration of the Conveyance Deed.

13. Counsel for the applicant relied on following decisions to buttress the above submissions viz. :-

i) The Ahamedabad Municipal Corporation of The City of Ahamedabad Vs. Haji Abdulgafur Haji Hussenbhai reported in 1971(1)SCC-757;

ii) Anchor Health and Beuty Care Ltd. Vs. Municipal Corporation of Greater Bombay and others reported in 2006(1)-Mh.L.J.-619;

iii) Vimalchandra Manikchand Gandhi Vs. Jawahar Shivlal Shah and others reported In 1995(4)-Bom.C.R.-231;

iv) D.Senthil Kumar and others Vs.

Commercial Tax Officer, Erode and another reported in (2006)3-M.L.J.-1019;

v) Mattoor Chits and Finance (P) Ltd. Vs. Mrs.Mary Baby reported in (1998)5-Comp.L.J.-383 (Ker).

14. In the first place, I shall revert back to the nature of reliefs claimed in the present application. Insofar as prayer clause (a) is concerned, to the extent that the applicant is seeking directions against respondent no.1 to pay the arrears of land revenue and tax to respondents 2 and 3 from the sale proceeds of the properties which have been purchased by the applicant for the period prior to the confirmation of sale in favour of the applicant is concerned, that issue can be considered by the Company Court. In my opinion, the question whether the arrears of land revenue and tax in respect of the said immovable properties should be paid along with interest or without any interest, which is the further relief claimed by the applicant, is an issue which will have to be addressed in appropriate proceedings arising out of demand made by the revenue authorities. If such proceedings are resorted to, it will be open to the applicant to raise that plea, which, indeed, will have to be decided by the competent

authority keeping in mind all the provisions of law and the settled legal position in that behalf. In my opinion, it will be inappropriate for the Company Judge to dwell upon those questions in the present proceedings.

15. In other words, in the present order, I would confine the claim of the applicant as to whether the applicant is entitled for directions against respondent no.1 requiring the respondent no.1 (Official Liquidator) to pay the arrears of land revenue and the taxes to the respondents 2 and 3 from the sale proceeds of the said immovable properties for the period prior to the confirmation of sale in favour of the applicant.

16. Insofar as prayer clause (b) is concerned, once again, that is a relief which will have to be considered in appropriate proceedings, if resorted to by the applicant, or any other party, questioning the demand made by respondents 2 and 3 for the revenue tax and the local tax for the period commencing from the date of confirmation of the sale of the properties to be paid with or without penalty. That issue is not within the domain of the enquiry to be made by the Company Judge. Once again, it will have to be reiterated

that as and when such proceedings are taken out and if pending, the applicant will be free to raise such contentions in those proceedings, which the competent authority will decide on its own merits keeping in mind all the relevant provisions of law and settled legal position in that behalf. I do not propose to dwell upon those aspects in the present proceedings.

17. Even the relief claimed in terms of prayer clause (c), I am afraid, is not within the domain of the enquiry before the Company Judge. The applicant, if so advised, may be free to take out such other proceedings as may be advised, so as to seek directions against respondents 2 and 3 to record its name in the revenue and other records maintained by respondents 2 and 3 in respect of the said immovable properties purchased by the applicant in auction sale. Thus understood, it is not open for this Court to entertain the relief in terms of prayer clause (c) of the application.

18. Indeed, insofar as relief in terms of prayer clause (d) is concerned, that is a matter which can be examined and appropriate orders passed by the Company Judge. I shall straight way deal

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with this relief on merits in the first instance. Indisputably, the auction purchaser-applicant is in no way asking for setting aside the order of confirmation of sale in its favour. Instead, the applicant wants to complete the formalities of sale by executing and lodging the Conveyance Deed for registration. Insofar as relief in terms of prayer clause (d) is concerned, as is noted earlier, the same has already been made absolute in terms of order dated 15th February 2007. Later on, this Court extended the period for execution of the Deed of Conveyance vide order dated 19th July 2007, granting further time to the applicant to comply with the formality up to 31st December 2007. Obviously, the applicant has not proceeded to comply with those formalities till now, on account of pendency of the present application. Inasmuch as, if the applicant was to proceed with the formalities of lodging the Conveyance Deed for registration, it would be necessary to first clear all the dues in respect of the immovable properties. As the issue, whether the applicant is liable to discharge those dues or it is the obligation of the Official Liquidator atleast upto to the date of confirmation of sale, is pending in this Court in the form of present application, the applicant

may have been advised not to move in the matter any further. Taking over all view of the matter, irrespective of the outcome of the nature of relief that will be granted in this application, the applicant will be bound to execute the Deed of Conveyance, sooner or later, so as to consumate the order of confirmation of sale of the immovable property in favour of the applicant. In the interest of justice and by way of indulgence, although my predecessor has already shown that indulgence to the applicant in the past, by way of one more opportunity and which is the last opportunity now given to the applicant under this order, the applicant may proceed with the execution of the Deed of Conveyance and complete those formalities not later than 30th April 2008. This direction will dispose off the prayer clause (d) of the application.

19. For the opinion already expressed in the earlier part of this order, it is not open to the Company Court to consider the reliefs as prayed in terms of prayer clauses (b) and (c) of the application. The applicant may be free to pursue such remedies in appropriate proceedings, if so advised. All questions in that behalf are left

open to be decided on its own merits in accordance with law as and when occasion arises. Accordingly, even prayer clauses (b) and (c) stand disposed off on this basis.

20. The only contentious issue that remains to be considered is emanating from the relief in terms of prayer clause (a). As already observed in the earlier part of this order, further relief claimed in terms of prayer clause (a) for direction to pay the arrears of land revenue and taxes in respect of said immovable properties "without any interest" is a matter which will have to be examined in appropriate proceedings arising out of the demand raised by the respondent nos.2 and 3. All questions in that behalf are left open to be decided on its own merits in those proceedings.

21. The only question that remains to be addressed is: whether the applicant is entitled for direction against respondent no.1-Official Liquidator requiring him to pay the arrears of land revenue and tax to respondents 2 and 3 from the sale proceeds of the said immovable properties pertaining to the period prior to the date of confirmation of sale in favour of the

applicant. This controversy will have to be addressed keeping in mind the terms and conditions of sale on the basis of which the sale of stated immovable properties has been confirmed by the Court in favour of the applicant. This is so because, the auction was conducted on the basis of the said terms and conditions of sale. The rights and obligations will have to be determined on the basis of the said terms and conditions of the sale. For, even the other participants in the auction had offered their bids on common understanding of the terms and conditions of the sale.

22. It is only if the terms and conditions of sale by no standards fasten liability on the auction purchaser in relation to the outstanding taxes and dues payable with regard to the immovable properties in question, would the applicant succeed in this application. On the other hand, if the terms and conditions obliges the auction purchaser to discharge such outstanding dues, the question of accepting applicant’s request in the present application will have to be straight away turned down. Whereas, in spite of such obligation, if that indulgence is shown to the applicant who

incidentally happens to be the highest bidder in the auction, it will result in unfair advantage to the applicant in contrast to the other participants. Viewed thus, it is necessary to first advert to the relevant terms and conditions of sale. The opening paragraph of the said terms and conditions of sale reads thus :-

> "The assets as per inventory will be sold by the Hon'ble High Court, Bombay by public auction on **"as is where is basis" and "whatever there is basis"** namely : (emphasis supplied)."

23. The other relevant clauses are clauses 11, 14, 18, 21, 22 and 25 of the terms and conditions of sale. The same reads thus :-

> "11. The Hon'ble High Court does not provide any guarantee as to the quality, quantity or specification on the schedule mentioned assets offered for sale. **The tenders/bidders are to satisfy themselves in this regard after physical inspection (spot inspection) of the assets of the company and the purchaser will be deemed to have made their offer with full knowledge as to the defects, if any, in the descriptions quality and quantity of the assets offered for sale and the Hon'ble High Court shall not entertain any complaint in this regard after the offer is made.**
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> 14. The purchaser shall be liable to pay Sales Tax, Additional Sales Tax and **all other local Taxes and dues and other**

cesses duties and taxes, Central Excise duty, custom duty, if any, in respect or affecting the sale of assets for which he has given the offer. **The Official Liquidator will not be responsible for payment of the same and it is the liability of the purchaser.**

18. The offerors, must satisfy themselves in all respects as to title, **encumbrances**, area, boundary etc. in respect of the immovable property. **The Official Liquidator gives no guarantee or warranty in respect of the said properties offered for sale.**

21. The purchaser shall prepare all documents as are necessary for conveying the title to him/them in connection with the sale of the property in question and shall submit a draft for approval to the Official Liquidator before engrossment. The purchaser shall pay stamp duty, Registration charges and **all other charges in connection with conveying of the title in his/their favour.** The conveyance deed should be completed within six months from the date of confirmation of sale.

22. The purchaser is purchasing the said properties with full knowledge of the facts that the Official Liquidator High Court Bombay is liquidator appointed in Company Petition No.412 of 1985 by the Hon'ble High Court, Bombay is in possession of the said properties and is selling the same pursuant to the order dated 22.3.2004 passed by the Hon'ble Division Bench of the High Court of Judicature at Bombay in Appeal (L) No.136 of 2004.

25. **The properties are being sold on "As is where is and Whatever there is basis"** and the purchaser shall not be entitled to raise any objection as to misdescription or quantity as the same are believed to be and shall be taken as correct **and if any error or misstatement or omission is discovered in the particulars of the assets, the same shall not annul the sale nor shall be**

entitled to any compensation from the Official Liquidator." (Emphasis supplied).

24. On conjoint reading of the above said terms and conditions, I have no hesitation in accepting the stand of the Official Liquidator that the obligation to discharge the outstanding dues towards arrears of land revenue and tax in respect of the immovable properties - even prior to the period of confirmation of sale in favour of the auction purchaser-would rest on the auction purchaser. This is so because the opening clause itself puts the bidders to notice that the auction of the immovable properties is on "as is where as basis" and "whatever there is basis". Indeed, this is too general notification to the bidders. At the same time, there is no declaration made nor any representation made to the prospective purchasers that there are no dues and outgoings in relation to the property put to sale or for that matter the sale is without such liability. Besides, clause 11 expressly stipulates that the High Court does not provide any guarantee as to the quality, quantity or specification on the schedule mentioned "assets" offered for sale. It is the tenderers/bidders who are required to satisfy themselves in that

behalf after physical inspection (spot inspection) of the assets of the company and it will be deemed to have made their offer with full knowledge as to the defects therein, if any, in the descriptions, quality and quantity of the assets offered for sale by the High Court and no complaint in that behalf shall be entertained after the offer is made. This omnibus clause clearly expects the bidders to reassure themselves about all matters associated with the immovable properties put to sale and the offers given by them are inclusive of all such matters and it will be deemed that they have given their offer with full knowledge as to the defects, if any. Notably, clause (14) expressly posits that the obligation is fastened on the purchaser to pay all outgoings, in respect and/or affecting the sale of assets including all other local taxes and dues and other cesses duties and taxes.

25. In connection with clause (14) two submissions were made on behalf of the applicant. The first submission is that, from the scheme of the said clause, it appears to be applicable in relation to movable properties and not immovable properties. This is so because no additional Sales Tax, Central Excise Duty, Customs Duty is

payable in respect of immovable property or affecting the sale of the immovable properties. It is then argued that the expression "all other local taxes and dues and other cesses duties and taxes" should be construed ejusdem generis so as to hold that the same relate to sale of movable properties and not immovable properties, as in this case. The other limb of argument was that assuming that Clause (14) was to apply even to immovable properties as in this case, it clearly postulates liability of the purchaser after the date of purchase. In other words, the liability will be prospective liability from the date of confirmation of sale and not in relation to the outstanding taxes or charges in respect of immovable properties for the period in anterior point of time.

26. After having given thoughtful consideration, keeping in mind all the terms and conditions as whole as well as reading them clause by clause, neither of the submissions canvassed on behalf of the applicant deserve acceptance. It cannot be overlooked that the terms and conditions which were notified are the model terms and conditions notified for sale of assets by the Official Liquidator. On most of the occasions, the

Official Liquidator proceeds to sale both, movable and immovable assets, of the company in liquidation together. Even in the present case, there were movable and immovable properties of the company in liquidation which were put to sale. To cover both these situations, the wordings of Clause (14) have been couched. The said condition not only applies to movable properties, but also to immovable properties. It is a different matter that in the present case only immovable properties have been purchased by the auction purchaser. Be that as it may, as observed earlier, clause (14) is a comprehensive clause not only covering the situation of sale of movable properties but also covering the situation of sale of immovable properties. Even the argument of construing the words appearing in clause (14) "all other local taxes and dues and other cesses duties and taxes" to be read ejusdem generis, deserves to be stated to be rejected. Significantly, clause (14) puts the prospective purchaser to notice that the Official Liquidator will not be responsible for payment of any of the local taxes and dues and other cesses duties and taxes and it will be the liability of the purchaser. The said expression appearing in clause (14) clearly refers to dues as on the date

of sale and not obligation arising posterior to the date of confirmation of the sale. That obligation is in respect of liabilities associated with the property on the date of sale. Besides clause (14), there are other clauses in the terms and conditions of sale which pursuade me to take a view that the purchaser alone becomes liable to pay all the outgoings in respect of the property put to sale in auction. Clause (18) clearly obligates the offerer to satisfy himself in all respects, as to "title, "encumbrances", area, boundary etc. in respect of the immovable property." It further provides that the Official Liquidator gives no guarantee or warranty in respect of the said properties offered for sale. In spite of such a clear declaration, if the offerer chooses to give his offer without making any semblance of enquiry about any encumbrances or the title of the immovable property, would run the risk of taking that obligation. Reverting to Clause (21), it obliges the purchaser to discharge ‘all other charges’ in connection with conveying of the title in his favour. The expression ‘all other charges’ is wide enough to obligate the purchaser to pay the outstanding local taxes and duties and other cesses duties and taxes in connection with

conveyance of the title in respect of the property in his favour. The controversy on hand can also be addressed on the basis of clause (22) which stipulates that the purchaser is purchasing the properties with full knowledge of the fact that the sale of the property is the result of order of the Court in winding up proceedings. To make things more clear, once again clause (25) of the terms and conditions provides that the properties are being sold on "as is where is basis and whatever there is basis". It further provides that the purchaser shall not be entitled to raise any objection as to misdescription or quantity as the same are believed to be and shall be taken as correct and if any error or misstatement or "omission' is discovered in the particulars of assets, the same shall not annul the sale nor shall be entitled to any compensation from the liquidator.

27. On conjoint reading of the aforesaid terms and conditions of the sale, I have no manner of doubt that the offerers/ bidders were put to clear notice that the immovable properties were being put to sale and the purchaser would be liable to pay all the outgoings in respect of the said properties due on the date of sale. If it

is so, it is reasonable to assume that all the participants made investigation about the title, encumbrances, and outstanding dues towards local taxes and dues and other cesses and duties and taxes in respect of the property put to sale before giving their offer. In other words, the offerers gave their bids keeping in mind all the obligations to be discharged in respect of the outgoings and other matters for purchase of the property. If any of the offerer has made the offer without such investigation and being oblivious of the liabilities associated with the property, would run the risk for such mis-adventure. As per clause (25) it is crystal clear that if any error, misstatement or omission is discovered by the purchaser, that cannot be the basis to annul the same nor would entitle the purchaser to seek compensation from the Official Liquidator.

28. That takes me to the case made out by the applicant in its affidavit in support. All that is mentioned in para 4, is that, the taxes which have become due and payable during the winding up will be payable out of the sale proceeds in priority to other claims. It is then stated that respondents 2 and 3 have already lodged their claims with the Official Liquidator. It is

further stated that the liability of the company in liquidation should not be passed on to the purchaser of the assets of the company and the purchaser will be liable for the payments of taxes for the period commencing from the date of confirmation of sale of the properties. There is no clear averment and for that matter even remote suggestion in the entire affidavit, that before the offer was made the applicant had made investigation on their own about the title, encumbrances and the outgoings or dues and taxes pertaining to the property. I would assume that they did not make such investigation. That can be no justification to absolve the applicant from their primary responsibility before proceeding to give their offer. Moreover, that will not extricate the applicant from the obligation spelt out in the terms and conditions of sale which unambiguously provide that the purchaser shall pay all local taxes and dues and other cesses, dues and taxes.

29. The counsel for the applicant had placed emphasis on the averments in paragraph 5 of the affidavit. I have already reproduced the same paragraph in the earlier part of this judgement. The applicant merely asserts in this paragraph

that the respondents 2 and 3 have lodged their claims to the Official Liquidator and the Official Liquidator had notice of such claim. It is then stated that it appears that no details have been provided by respondent no.2, presumably regarding the break-up of the total claim. Even on bare reading of the entire affidavit as a whole or by clause by clause, there is no averment or even remote assertion made that the applicant was purchaser without notice of the arrears, as is now claimed by respondents 2 and 3, in relation to the stated immovable properties. Be that as it may, I will have to proceed on the assumption that the applicant gave offer to purchase the immovable property with full knowledge of all the outstanding dues in relation to the stated immovable properties payable to respondents 2 and 3.

30. During the course of arguments, however, it was seriously argued on behalf of the applicant that the applicant is purchaser without notice of the outstanding dues and that although the respondent no.1 was fully aware about the claim of respondents 2 and 3, which has been lodged before him as back as in 2002, failed to disclose that position to the offerers muchless the

applicant before the auction or for that matter before or on the date on which the order of confirmation of sale came to be passed by this Court. In the first place, the applicant cannot shift the blame on respondent no.1 Official Liquidator for non disclosure of the relevant information. That cannot extricate the applicant from the obligation under the terms and conditions of sale. In the present case, no such assertion has been made in the affidavit as filed. All that has been mentioned is that the Official Liquidator cannot pass on the burden of outstanding dues for the period prior to the date of confirmation of the sale of the properties on the applicant. If the applicant has participated in the bid and purchased the properties with open eyes and in spite of the stated terms and conditions for sale already notified to which I have already adverted to,it is too late in the day for the applicant to contend that the Official Liquidator and not the auction purchaser is liable to pay any outgoings for the period anterior to the date of confirmation of sale.

31. That takes me to the argument of the applicant that what is applicable to the case on hand is the obligation arising under clause (21)

of the terms and conditions of sale. According to the applicant, the only obligation of the applicant is to pay stamp duty, registration charges and other related expenses in connection with conveying the title in its favour and to complete within six months from the date of confirmation of sale. According to the applicant, the expression "all other charges" appearing in clause (21) will have to be read with other expenses referred to in the same clause which are in relation to execution of conveyance deed and cannot be construed as obligation to discharge the outstanding dues of respondents 2 and 3 in respect of the stated immovable properties. Assuming that the applicant maybe right that the expression "all other charges" appearing in clause (21) is in the context of registration of conveyance deed, however, that does not take the matter any further for the applicant. This is so because there are other clauses in the terms and conditions of the sale which will have to be jointly read to ascertain whether the purchaser would be obliged to pay the outstanding dues of respondents 2 and 3 in relation to the immovable properties. I have already elaborated those aspects in the earlier part of this order.

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Suffice it to observe that the obligation of the applicant arises out of the contractual terms. The applicant having participated in the bid without any demur, accepted all the terms and conditions of the sale as it is. On reading the stipulations in the said document, as already observed earlier, the purchaser is obliged to pay all the outgoings on the date of sale in relation to the immovable properties.

32. That takes me to the argument of the applicant that the dues in relation to the immovable properties would constitute charge. There can be no quarrel with the said proposition. However, as is already observed earlier, it is not possible to countenance the claim of the applicant that it is the purchaser of the immovable property without notice of the charge so as to absolve the applicant of that obligation. There is no pleading to that effect at all.

33. Learned counsel for the applicant placed emphasis on the decision of the Apex Court in case of The Ahmedabad Municipal Corporation of the City of Ahmedabad (supra). That was a case where the auction purchaser/respondent before the

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Apex Court had challenged the "claim of the Corporation" relating to the liability, being an auction purchaser of the property at an auction, pertaining to arrears of municipal tax dues on the date of sale to the Municipal Corporation which dues were not paid for years. In that case, the respondent had approached the Court with an express plea that he had purchased the property without notice of the said dues. Besides, the Apex Court was not required to consider the issue as to whether the Court Receiver (read Official Liquidator) was liable to pay the outstanding dues in relation to the property for period prior to the date of confirmation of sale inspite of the terms and conditions of sale of the property. In other words, the point in issue was in the context of challenge by the auction purchaser to the demand made by the Corporation for the outstanding dues prior to the date of confirmation of sale of the property in his favour. In that case, the first contention raised on behalf of the Corporation was that there is no warranty of title in an auction sale. Significantly, that plea has been accepted by the Apex Court. The Apex Court has observed that the general contention seems to be well-founded because it is axiomatic that the

purchaser at auction sale takes the property subject to all the defects of title and the doctrine caveat emptor (let the purchaser beware) applies to such purchaser. In fact, this dictum of the Apex Court will apply on all fours to the case on hand.

34. The Apex Court, however, rejected the second contention of the Corporation that even though the auction purchaser has purchased the property without notice, would be liable for the outstanding dues for the period prior to the date of the order. That principle has been expounded on the basis of Section 100 of the Transfer of Property Act which provides that no charge shall be enforced against any property in the hands of the person to whom such property has been transferred for consideration and without notice of the charge. In the present case, there is no assertion on behalf of the applicant that they purchased the property without notice of the charge. That is a question of fact which ought to be pleaded and proved. In absence thereof, Section 100 of the Transfer of Property Act will be of no avail.

35. Be that as it may, in the matter before the

Apex Court, the Corporation attempted to justify their claim against the auction purchaser relying on the provisions of Bombay Municipal Act. The Apex Court, however, construed that provision and observed that it did not provide that the charge is enforceable against the property charged in the hands of a transferee for consideration without notice of the charge, to reject the claim of the Corporation. I am not required to consider that aspect in the present case. That will be a matter between the applicant and respondents 2 and 3 arising out of the demand raised by respondents 2 and 3 in respect of the immovable property.

36. In the present case, the matter will have to be examined in the context of obligations of the applicant (auction purchaser) arising out of the terms and conditions of sale. There is no law nor any provision brought to my notice which prohibits the Official Liquidator to offer the movable or immovable properties for sale with such stipulation. Indubitably, the law obligates the Official Liquidator to realise the best price for the assets to settle the claim of the creditors and other stake holders of the company in liquidation. There is nothing wrong,

therefore, if the Official Liquidator, upon taking directions of the Company Court, chooses to sell the properties of the company in liquidation with all the liabilities, outgoings and encumbrances. To put it differently, it is not impermissible for the Official Liquidator to auction the properties with obligation on the purchaser to take the liability of all the outstanding dues and charges thereon.

37. The next argument advanced is that, the Official Liquidator had sufficient funds since 2002 to pay all the outstanding dues in relation to the stated immovable properties, but failed to do so. Besides, the Official Liquidator did not disclose that liability either before auction or at the time of confirmation of sale. I have already considered this argument in the earlier part of this order-that there is no pleading on the factum that the respondent no.1 Official Liquidator did not disclose the liability pertaining to the immovable properties before the auction or before confirmation of sale. The fact that the Official Liquidator had sufficient funds to discharge the liability and failed to do so also cannot be the basis to extricate the applicant-auction purchaser, who has purchased

the property with knowledge that such dues may be fastened on the purchaser in view of the terms and conditions of sale. In other words, the obligation of the Official Liquidator to pay the taxes and charges in relation to the immovable properties from time to time and that failure to discharge that obligation, would not take the matter any further. For, the matter will have to be decided on the terms and conditions of sale. The parties will be bound by those conditions. As is mentioned earlier, no provision has been brought to my notice that it is impermissible for the Official Liquidator to remain in default and at any rate not offer the encumbered property to sale or to place a condition on the purchaser that he would take the liability of the outstanding dues thereof. If it is not impermissible to do any of these, as a necessary corollary the auction purchaser will be liable to take the burden of all the outgoings in relation to the property put to sale especially when the terms and conditions of sale so provide.

38. Reverting to the decision of the Apex Court in Ahamedabad Municipal Corporation’s case (supra), the third contention considered by the Apex Court on behalf of the Corporation was that

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the plaintiff (auction purchaser) must be deemed to have constructive notice of the arrears of municipal taxes and as an auction purchaser he must be held liable to pay the same. The Apex Court adverted to the decisions pressed into service before it, whereafter expounded the legal position in paragraph 11 in the following words : the circumstances which by a deeming fiction impute notice to a party are based, on his wilful abstention to enquire or search which a person ought to make or, on his gross negligence; is commonly known as "constructive notice". The Apex Court went on to observe that wilful abstention suggests conscious or deliberate abstention and gross negligence is indicative of a higher degree of neglect. It further observed, negligence is ordinarily understood as an omission to take such reasonable care as under the circumstances is the duty of a person of ordinary prudence to take. The Apex Court then proceeded to hold that the question of constructive notice is a question of fact or at best mixed question of fact and law. It then expounded that the question one has to answer in circumstances like the one before the Court in that case is not whether the purchaser had the means of obtaining and might with prudent caution

have obtained knowledge of the charge but whether in not doing so he acted with wilful abstention or gross negligence. Even in the present case the applicant (auction purchaser) made no enquiry or search which a person of ordinary prudence ought to have made before offering its bid in respect of the property in question. There is nothing in the affidavit filed by the applicant that any such attempt was made.

39. In paragraph 12 of the decision, the Apex Court then went on to examine the facts of that case. Strong reliance was placed by the counsel for the applicant on the observations made in paragraph 12 to contend that merely because taxes are charged on the property, could not constitute valid ground for the Official Liquidator not to discharge this liability. The Apex Court has also observed that the plaintiff (auction purchaser) purchased the property on reasonable expectation that the Receiver would have paid the municipal charges and other dues. The argument, though attractive, will have to be turned down in the fact situation of the present case. This is so because there is no averment in the affidavit in support filed on behalf of the applicant that it had purchased the property without notice of

the charge or the outstanding dues; or for that matter the Official Liquidator misled them in believing that there was no charge or outstanding dues in respect of the immovable properties. The abovesaid decision of the Apex Court, therefore, is of no avail to the applicant. As aforesaid, the case before the Apex Court was arising out of a suit filed by the auction purchaser against the Corporation, who asserted that the plaintiff was obliged to pay all the outstanding dues in respect of the property to which statutory charge apply. As and when respondents 2 and 3 raise such demand against the applicant, the applicant will be free to take recourse to such remedy as may be permissible by law, if already not taken. In those proceedings, the principle expounded by the Apex Court in the case of the Ahamedabad Municipal Corporation of the City of Ahamedabad, which is strongly relied in particular para 12 of the judgement, may be of relevance. In the present case, however, the limited issue is whether in spite of the terms and conditions of sale, the Official Liquidator is liable to pay all the charges and dues in respect of the immovable property for the period prior to the date of confirmation of sale? In other words, the question whether the Corporation may succeed

against the applicant (auction purchaser) to recover that amount is not the matter in issue in the present proceedings.

40. To get over this position, the counsel for the applicant had strongly relied on the decision of our High Court in the case of Anchor Health and Beauty Care Limited. Even in that case, after the sale was confirmed in favour of the auction purchaser and upon payment of entire consideration, the Corporation issued a warrant of attachment. The auction purchaser challenged that warrant of attachment by way of substantive proceedings before this Court being Writ Petition No.1340 of 2005. In that sense, the dispute brought before the Court was between the auction purchaser and the Corporation for the outstanding amounts recoverable in respect of the immovable property purchased. In the context of the said controversy, the Court went on to examine the matter as to who is liable to pay the dues of a company before winding up, after winding up and subsequent to purchase by a party - in proceedings for sale of a company in liquidation. Indeed, the Court has observed that the position in law would be clear that the purchaser of property from a Liquidator of the company in

winding up is not liable to pay the taxes for the period previous to his purchase. That exposition cannot be treated as the ratio of the decision on the point that arises for my consideration. Moreover, even in that matter, the Court was not called upon to consider the efficacy of the terms and conditions of sale as in the present case. As noted earlier, the point in issue in the said case was whether the Corporation was entitled to recover the dues from the auction purchaser pertaining to period prior to the date of confirmation of sale. If so, that decision will have no application on the point that arises for my consideration.

41. In the present case, there is no challenge to the terms and conditions of sale. The applicant has not alleged fraud played by the Official Liquidator in the conduct of auction or confirmation of sale. The applicant participated in the auction without any demur along with other bidders, who had also made their offers on the basis of self-same terms and conditions. If the applicant’s request in the present application were to be accepted, it would inevitably result in applicant getting unfair advantage over the other bidders, who had participated along with

the applicant in the auction, keeping in mind the terms and conditions of sale. Suffice it to observe that the general principle expounded in the decision of this Court in Anchor Health and Beauty Care Limited (supra) will have no bearing on the point in issue as to whether the applicant is liable to pay the outstanding dues having regard to the terms and conditions of the sale. As aforesaid, it is not impermissible for the Official Liquidator to offer the property for sale which is encumbered or place condition that the purchaser shall take the liability of discharging the outstanding dues in relation to the property. If it is not impermissible to do so, it is too late in the day for the applicant to question the terms and conditions on the basis of which the auction of properties took place and sale of properties came to be confirmed in its favour. No provision is brought to my notice that it is mandatory for the Official Liquidator to offer the assets for sale only after discharging all the taxes and charges and free from taxes or encumbrances.

42. It will be useful to refer to the decision in the case of Hi-Q Electronics Pvt. Ltd. Vs. Branch Manager, Tamil Nadu Industrial Investment

Corporation Limited reported in 2000(4)-CTC-342. Even in that case, the Court declined any relief to the writ petitioner, who was auction purchaser, on the reasoning that the petitioner had accepted the terms and conditions for sale that he would pay the electricity dues, property tax and other taxes to the Government including the other statutory liabilities as per clause-16. Even in that case, the grievance was made on behalf of the petitioner that although the respondents knew about the arrears of Sale Tax and the attachment, the petitioner was not informed about the same before the acceptance of the bid. The Court rejected that submission by observing that the petitioner is bound by the terms and conditions of the sale.

43. The counsel for the applicant had relied on the decision of Madras High Court in the case of D.Senthil Kumar and others Vs. Commercial Tax Officer, Erode and another reported in (2006)3-M.L.J.-1019. Once again, it was a case where writ petition was filed by the auction purchaser questioning his liability to pay the arrears of Sale Tax dues under Tamil Nadu General Sales Tax Act, 1959 purchased by him at a public auction. The question considered by the Court

was that whether the charge created on the property under the Tamil Nadu General Sales Tax Act is enforceable against a transferee of such property? That question may be relevant between the applicant and respondent nos.2 and 3. The principles to be kept in mind to answer that controversy, in my opinion, have no bearing to consider the point in issue in the present application, which revolves around the terms and conditions of sale. Significantly, even in that case, the Court had no occasion to examine the matter in the context of efficacy of the terms and conditions of sale and obligation of the auction purchaser arising therefrom. Accordingly, this decision will be of no avail to the applicant.

44. Learned counsel for the applicant had also pressed into service the decision of our High Court in the case of Vimalchandra Manikchand Gandhi Vs. Jawahar Shivlal Shah and others reported in 1995(4)-Bom.C.R.-231. The only question of law which was decided by this Court in the Second Appeal arising out of the suit filed by the auction purchaser was whether the Corporation was entitled under the law to recover the property dues from the original owner of the

property and not the auction purchaser for the period prior to the date of confirmation of sale. For the reasons noted while considering the earlier decisions, on the same reasoning, the exposition of this decision will be of no avail to the applicant. Even in that case, this Court had no occasion to consider the efficacy of terms and conditions of sale and the obligation of the auction purchaser arising on account of those conditions.

45. The counsel for the applicant lastly relied upon the decision of Kerala High Court in the case of Mattor Chits and Finance (P) Ltd. (In Liquidation) Vs. Mrs.Mary Baby reported in (1998)5-Comp.L.J.-383 (Ker) to contend that the respondents 2 and 3 can claim interest only up to the date of presentation of the winding up petition and no interest can be claimed after the commencement of the winding up proceedings on the outstanding dues. This judgement would be relevant to consider the relief in terms of prayer clause (b) and further relief in terms of prayer clause (a) as to whether the Municipal Authorities can demand interest or penalty on the outstanding dues payable in respect of immovable properties owned by the company in liquidation.

That question will be relevant in the appropriate proceedings arising from the demand made by respondents 2 and 3. Those questions have been left open to be decided in appropriate proceedings. It will be inappropriate for the Company judge to dwell upon that controversy.

46. While parting I would restate that the observations in this decision are not an expression of opinion either way on the claim of the respondents 2 and 3 in any manner, including the one pending before the Official Liquidator. For, if the law obligates the company in liquidation to pay any outgoings to the Municipal Authorities irrespective of the sale of the assets with encumbrance to the auction purchaser, the respondent nos.2 and 3 may succeed in getting proportionate amount from the sale proceeds/funds of the company in liquidation available with the Official Liquidator for distribution as per their entitlement in accordance with the provisions of the Companies Act. Needless to observe that the question whether the company in liquidation is liable to pay any interest and penalty irrespective of the sale of assets with encumbrances to the auction purchaser, is also a matter to be adjudicated by the Official

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Liquidator while considering the claim of the respondent nos.2 and 3 in that behalf in accordance with law.

47. For the reasons aforesaid, the relief claimed by the applicant for direction against respondent no.1 Official Liquidator requiring him to pay the arrears of land revenue and taxes to respondents 2 and 3 "from the sale proceeds of the properties" pertaining to the period prior to the date of confirmation of sale in favour of the applicant, is rejected.

48. Accordingly, this application is disposed off on the above terms with costs.

(A.M.KHANWILKAR, J.)

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DRAFT ORDER RECEIVED DULY CORRECTED ON 25.2.2008. SENT FINAL COPY BY CARRYING OUT CORRECTIONS ON 25.2.2008 ITSELF.

AGAIN RECEIVED THE RECORRECTED DRAFT ON 26.2.2008 WHICH STOOD CORRECTED AND SENT FOR SIGNATURE ON 26.2.2008. IT IS THE THIRD COPY SENT.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.75 OF 2007
IN
COMPANY PETITION NO.412 OF 1985

Transcription of Judgement
submitted on : 26.02.2008

For approval :

THE HON'BLE MR.JUSTICE A.M.KHANWILKAR)

To be referred to the reporter or not ?

To be shown to the reporters of the
local news-papers or not?